

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA

VS.

CRIMINAL NO. 3:18CR114HTW-FKB

DEVIN MODACURE

MOTION HEARING

BEFORE THE HONORABLE HENRY T. WINGATE
UNITED STATES DISTRICT JUDGE
AUGUST 29, 2018
JACKSON, MISSISSIPPI

APPEARANCES:

FOR THE GOVERNMENT: MR. ABE MCGLOTHIN
MR. KEITH B. FRENCH

FOR THE DEFENDANT: MR. DENNIS C. SWEET III
MR. DENNIS C. SWEET IV

REPORTED BY: CHERIE GALLASPY BOND
Registered Merit Reporter
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1 THE COURT: All right. Mr. McGlothlin, call your case.

2 MR. MCGLOTHLIN: Your Honor, we're before the court on
3 United States v. Devin Modacure, criminal number
4 3:18CR114HTW-FKB. Your Honor, we're before the court for
5 motion hearings on motions that were filed by the government as
6 well as the defense. The defendant is present in the courtroom
7 with his attorney, the Honorable Dennis Sweet.

8 THE COURT: All right. Good morning, Mr. Sweet.

9 MR. SWEET III: Good morning, Your Honor.

10 THE COURT: And you're here with your client?

11 MR. SWEET III: We have the other Mr. Sweet too.

12 THE COURT: Right. Good morning to you.

13 MR. SWEET IV: Good morning, Your Honor.

14 THE COURT: All right. Now, then, on these motions
15 that are before me -- oh, and counsel identify for the
16 record --

17 MR. MCGLOTHLIN: Your Honor, seated with me is
18 Assistant United States Attorney Keith French.

19 THE COURT: All right. Good morning to you.

20 MR. FRENCH: Good morning.

21 THE COURT: All right. Now, what is the government's
22 notion about what motions to take up first? I can take them up
23 in the order in which they were filed or in some other order if
24 that's more appropriate. So what's the government's
25 contention?

1 MR. SWEET III: May I speak to the government?

2 THE COURT: Yes, go right ahead. You all can have a
3 seat.

4 (Off-the-Record Discussion)

5 MR. SWEET III: Thank you.

6 THE COURT: All right. Go ahead.

7 MR. McGLOTHIN: Your Honor, we'll take up the motion
8 to compel that was filed by the defense first.

9 THE COURT: Okay. All right. Mr. Sweet, are you
10 ready to go forward?

11 MR. SWEET III: Yes, Your Honor. Your Honor, I
12 believe the government and I have reached an agreement on this
13 motion.

14 THE COURT: Okay.

15 MR. SWEET III: I believe he subpoenaed the records
16 that I was requesting from the City, and the City would produce
17 them to him. He didn't have an opportunity to review and
18 redact and produce them to me. The only thing I'd ask the
19 opportunity after I'm produced with redaction that if I think
20 it's important that I have an opportunity to file a motion for
21 in camera inspection of all of them, all of the records.

22 THE COURT: Okay. Mr. McGlothlin, is that the
23 agreement that the two of you have reached?

24 MR. McGLOTHIN: Yes, Your Honor, as it relates to the
25 answer on the affairs reports as well as the records that were

1 requested under bullet point 3 and 4, the police records from
2 the shooting earlier that day. The government will provide
3 those documents to the defense.

4 Your Honor, the government will provide the documents,
5 but we will again, Your Honor, hold to our ability to make any
6 objection to those documents. We do believe that we will be --
7 that we are required to turn those over to the defense;
8 however, the government has not stating that those documents
9 will, in effect, be admissible in trial. But we do agree we
10 will turn those documents over.

11 THE COURT: Okay. Now, can you prepare an order to
12 that effect and have it approved by Mr. Sweet?

13 MR. McGLOTHIN: Yes, Your Honor.

14 MR. SWEET III: Your Honor, may I make a request? I
15 don't want to overstep my bounds with the government. They've
16 talked to the City about these records.

17 THE COURT: Okay.

18 MR. SWEET III: I've had a lot of dealings with the
19 City of Jackson and the City Attorney's office, and obtaining
20 things and moving forward, an old country saying, it just ain't
21 easy. The city's kind of difficult to deal with. I don't know
22 if the government -- we put a time on the City or the
23 government have the court issue an order.

24 But my experience with them is they take a long time.
25 They go through all kind of processes, and the City council and

1 all this. And then they turned this case over. I don't
2 understand why they wouldn't have turned all the information
3 over to ATF. It's not the government because the government is
4 imputed with their knowledge. I don't know if the government
5 wants to wait and see whether they speedily comply with this
6 subpoena or have an order from this court to produce that
7 information to the government. That's the only thing. I may
8 be overstepping my grounds, but the government --

9 THE COURT: Let me see what Mr. McGlothlin's experience
10 on this matter is. Mr. McGlothlin, have you had a contact
11 person on this matter?

12 MR. MCGLOTHLIN: Your Honor, I've been working through
13 the ATF agent on this case who has has been working in
14 conjunction with the Jackson Police Department. And so far all
15 the documents we requested from the Jackson Police Department
16 they have provided it.

17 But as related to this internal affairs report, at
18 this time -- at the time in which this incident took place, JPD
19 they were conducting their own internal affairs investigations.
20 So those reports would be -- that would be something that
21 Jackson Police Department would have to turn over, and the
22 response that we received was that they would turn the
23 documents over but they needed to allow the City attorney's
24 office to review all of the documents that they intended to
25 turn over before they turned it over to us.

1 I, of course, intend -- I've spoken to Mr. Sweet and
2 we don't intend for them to redact anything as that would be
3 the government's duty to redact anything that we see fit. But
4 the JPD officers -- the JPD management stated that they would
5 have to turn -- that they would have to you go through the City
6 attorney's office before they could turn those documents over.

7 THE COURT: Did they give you any time frame?

8 MR. McGLOTHIN: I was not given a time frame.

9 THE COURT: In the past when you have worked with them
10 on matters such as this, how long has it taken?

11 MR. McGLOTHIN: Your Honor, this would actually be my
12 first time having to deal with the City attorney's office in
13 turning over an internal affairs report.

14 THE COURT: Okay. And has your office before -- not
15 you but anybody in your office sought internal affairs reports,
16 to your knowledge?

17 MR. McGLOTHIN: I have no knowledge of that, Your
18 Honor.

19 THE COURT: Okay. So you did not ask how long it
20 might be before the City would surrender the documents?

21 MR. McGLOTHIN: We asked the Jackson Police
22 Department, and they stated that they would turn their
23 documents over but they were not certain how long -- how long
24 it would take the City attorney's office to review those
25 documents and then turn them over to us.

1 So I think at this point it rests on the City
2 attorney's office and I can make contact with them to see how
3 long it would take them to respond to the government subpoena.
4 I would like to believe that it shouldn't be a problem. But if
5 it is, I would certainly come back before the court and let the
6 court know that we're having issues and have the court to get
7 involved, but I'd like to believe that it shouldn't be an
8 issue.

9 THE COURT: Have you been told how many documents
10 we're talking about?

11 MR. McGLOTHIN: No, Your Honor, I have not.

12 THE COURT: Could you reach out to the City and make
13 these inquiries?

14 MR. McGLOTHIN: Yes, Your Honor.

15 THE COURT: So that I would know whether I have to get
16 involved in the process?

17 MR. McGLOTHIN: Yes, Your Honor.

18 THE COURT: So could you do that and then submit a
19 letter to the court and also a copy of same to the defense to
20 educate us as to what the City is saying about this matter?

21 MR. McGLOTHIN: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. SWEET III: Your Honor, may I add one -- ask one
24 question?

25 THE COURT: Okay.

1 MR. SWEET III: It would be for the U.S. Attorney to
2 redact information or not turn over information. It won't be
3 for the City attorney. If they plan on reviewing it and
4 saying, We're going to give you this and not this and not this,
5 that would be a function that they shouldn't have. That's
6 going to be the function of the young gentlemen here to do that
7 and have the records here.

8 I'm not saying they've got to turn them over to me.
9 He will make that determination, and then I can argue with the
10 court whether or not if I think it's something I would be
11 entitled to.

12 But for them to take out information and not produce
13 it to the U.S. Attorney -- which I don't know why they
14 wouldn't. They're part of the government, and this gentlemen
15 then would redact it or whatever in this court system. Any
16 other kind of thing could drag this production out for a while.
17 It would be easier for the City just to give it to them and let
18 them redact it and let the court do the in camera inspection.

19 THE COURT: Isn't the City involved in some litigation
20 concerning this matter?

21 MR. SWEET III: Your Honor, we did do a notice of
22 claim early on. We haven't filed a lawsuit at this point, a
23 1983 or anything. The statute has not run, but we don't have
24 any information from the City -- they never even contacted us.
25 They never said anything. The only thing we got was a warrant

1 for his arrest.

2 So if I had civilly, I could have had some information
3 at this point, but I did not file the civil lawsuit at this
4 time. So we don't have anything from the City -- no response
5 to the civil lawsuit, no nothing, just nothing.

6 THE COURT: Okay.

7 MR. SWEET III: I'm just afraid -- Your Honor, I
8 understand -- I have been before the court and I know this
9 court when it sets a trial date like it did the other day, this
10 court plans on going and it takes some -- it takes some effort
11 to get this court not to go. And so I don't want to be in a
12 position where they are dribbling them stuff and we have
13 another court date.

14 THE COURT: Okay, Mr. McGlothin, let's move -- like I
15 said before, I want you to contact the City and try and get
16 some informal understanding as to the situation here. And if
17 it appears the court needs to get involved, let me know as soon
18 as possible so that I can issue the appropriate orders on the
19 matter or for that matter have the appropriate hearing on the
20 matter because if there is some contention that the City should
21 not surrender all the documents pursuant to your subpoena, then
22 I need to have a hearing on your subpoena and any objections
23 that the City might have and whether those objections are
24 appropriate under the circumstance.

25 So let the City know that we're quite concerned about

1 the documents, and if there's some need to submit the documents
2 under any kind of nondisclosures of some points or protective
3 order, ask about that question too so then I'll have an idea on
4 what the city's position is on this whole matter. Okay?

5 MR. McGLOTHIN: Yes, Your Honor.

6 THE COURT: Get that to me as soon as you have an
7 answer.

8 MR. McGLOTHIN: Yes, your Honor, I will.

9 THE COURT: But I will certainly expect an answer in
10 the next two days though.

11 MR. McGLOTHIN: Yes, Your Honor.

12 THE COURT: Before Friday, at least before the close
13 of business on Friday.

14 All right. Let's go to the next motion. Is the next
15 motion pretrial detention? Is that the next one? There was a
16 motion to compel discovery, motion for reconsideration of
17 pretrial detention, and then there's a motion in limine.

18 MR. SWEET III: I believe the court decided that
19 motion for reconsideration.

20 THE COURT: Okay. So then we're now at the motion
21 for -- motion in limine.

22 MR. SWEET III: Yes, this would be our last motion,
23 Your Honor.

24 THE COURT: That's your motion?

25 MR. SWEET III: That's the government's motion.

1 THE COURT: All right. Then, Mr. McGlothlin, your
2 motion.

3 MR. MCGLOTHIN: Yes, Your Honor. Your Honor, I don't
4 want to hastily skip through Mr. -- the motion filed by the
5 defense and to preclude our argument from some things that we
6 had. As relates to bullet point six where it's outlined prior
7 complaints against the JPD officers, Your Honor, the government
8 will contend that those are documents that are in essence
9 *Giglio* related and they will be provided to the defense in
10 accordance with the discovery orders.

11 THE COURT: Say that again, now.

12 MR. MCGLOTHIN: The documents contain -- that are
13 requested as relates to -- under heading 6 of the defense
14 order, prior complaints against the JPD officers and any
15 dishonesty or misconduct that they would like to -- that they
16 would like for the government to disclose, the government would
17 contend that those are documents that those are *Giglio*
18 documents and that they will be provided in accordance with the
19 discovery order which gives the -- which obligates the
20 government to provide those documents within five days of the
21 trial.

22 THE COURT: You have those documents?

23 MR. MCGLOTHIN: I do not have them at this moment,
24 Your Honor. We're going to be obtaining those from the Jackson
25 Police Department also. But we do not have them -- I do not

1 have them at the moment.

2 THE COURT: Okay.

3 MR. McGLOTHIN: I'm not certain as to -- aside from
4 the shooting, I'm not certain as to whether there are any other
5 acts related to these officers at all, but we're going to -- I
6 do plan to look into it and to have Jackson Police Department
7 and the HR department provide us with those documentations as
8 well as to question the officers about any act of dishonesty as
9 we do in every case.

10 And again those are -- those would be required -- the
11 government's required to turn those over within the five days.

12 THE COURT: Response from the defense.

13 MR. SWEET III: Your Honor, I believe that comports if
14 those documents are produced -- if he wants to go the five days
15 out, that's fine. We'll get them within five days of trial we
16 are entitled -- he just has to get them from the City. The
17 City has to produce them to them.

18 THE COURT: All right. In that order that I asked you
19 to submit to me, place that in the order too. All right?

20 MR. McGLOTHIN: Yes, Your Honor.

21 THE COURT: Then finally, with regard to the matter
22 of reconsideration of pretrial detention, put down -- not
23 down, but include in the order that this matter is now moot
24 because it has been addressed previously because it's still
25 showing up on the motion sheet.

1 So I have on my motion sheet Docket Number 15, Motion
2 for Reconsideration of pretrial detention, Docket Number 22,
3 Motion to Compel Discovery, and Docket Number 21, Motion in
4 Limine.

5 So then Mr. McGlothlin, these are the only three I have
6 on my motion sheet, and the ordered that you are to submit to
7 me after you have submitted it to the defense for the defense's
8 approval of the order are the only three that I have on here.
9 Now, are there any others, any other motions?

10 MR. MCGLOTHIN: No, Your Honor, other than addressing
11 what's contained within the motions that have been filed.

12 THE COURT: What do you mean?

13 MR. MCGLOTHIN: For example, I also want to take up
14 what's been argued in the defense's motion to compel discovery
15 and their conclusion.

16 THE COURT: Okay. And what's your issue with the
17 conclusion? You said that the government has argued and stated
18 over and over this is not a police shooting case and they don't
19 want to try such a case, and you're contending that a -- well,
20 why don't you go ahead and state what it is here. I'm looking
21 at your conclusion, but go ahead.

22 MR. MCGLOTHIN: Your Honor, this is the defense's --
23 this is the conclusion of the defense and not the government,
24 and the defense is alleged -- is stating that we, the
25 government -- that we have argued that this is not a police

1 shooting case and that they have the right to try the case from
2 their viewpoint and that it is relevant whether this shooting
3 was improper and the lengths that the officers would go in
4 justifying this as a legal shooting.

5 And, Your Honor, the government contends that this is
6 simply a felon in possession case that as it relates to the
7 shooting that the shooting that was involved has no bearing on
8 the elements that the government has to prove. The government
9 only has to prove three elements in this case, Your Honor, and
10 that is that the defendant knowingly possessed a firearm as
11 charged, that before the defendant possessed the firearm he had
12 been convicted of a crime that's punishable by a term of
13 imprisonment in excess of one year, that is, a felony offense,
14 and that the possession of the firearm was in or affecting
15 commerce.

16 As relates to whether there was an officer-involved
17 shooting, Your Honor, the government contends that that's
18 completely irrelevant as to whether the defendant actually
19 possessed a firearm, and that has been the government's
20 contention since the beginning of this case.

21 Your Honor, the government believes that the defense
22 wants to try an officer-involved shooting, that that's a civil
23 matter and they can proceed to go forward with the civil case,
24 and they can seek whatever remedy that they can before this
25 court on another court as relates to a civil judgment against

1 the City.

2 But the government has only indicted this defendant
3 for being a felon in possession of a firearm. And we believe
4 that any mention of believed involved shooting and trying to
5 delve into whether this was a legal justifiable shooting is
6 completely irrelevant as to whether this defendant possessed a
7 firearm and would do nothing but attempt to elicit sympathy
8 from the jury, and it would simply cloud the issues as to what
9 the issue is in this case and the defendant has been indicted
10 for.

11 As such, Your Honor, the government believes that the
12 defense should be precluded from going into the shooting as
13 relates to this case because that's not what the government's
14 pursuing.

15 THE COURT: What's the government's proof on knowing
16 possession of the firearm?

17 MR. McGLOTHIN: Your Honor, the -- there were two
18 officers -- there were officers who actually approached this
19 defendant and saw what appeared to be a firearm on him. As
20 they were attempting to pat him down, they asked to do a *Terry*
21 pat of the defendant. At that point in time the defendant
22 began to run, and he ran into a house which was behind the
23 house where he was initially standing. And once officers were
24 able to apprehend him, they did, in fact, find a weapon on him.
25 The government --

1 THE COURT: Found a weapon on -- on him?

2 MR. McGLOTHIN: On the defendant, Yes, Your Honor.

3 THE COURT: And there were two officers?

4 MR. McGLOTHIN: There were three officers initially.

5 Two officers approached the scene. Two officers were right
6 behind him attempting to apprehend him, and another officer
7 came up shortly thereafter. But the initial contact that they
8 made with the defendant where they -- where one of the officers
9 alerted them that there was a weapon on the defendant. There
10 were three -- a total of three officers present at that time.

11 THE COURT: Okay. So those three officers are on your
12 witness list?

13 MR. McGLOTHIN: Yes, Your Honor.

14 THE COURT: And those three officers are prepared to
15 testify, in your estimation, that the defendant possessed this
16 firearm?

17 MR. McGLOTHIN: Yes, Your Honor.

18 THE COURT: And what type of firearm are we talking
19 about? We don't need serial number and all of that, but is it
20 a pistol or is it a rifle? What are we talking about?

21 MR. McGLOTHIN: Your Honor, it's a pistol. It was a
22 Glock model 2240 caliber pistol.

23 THE COURT: Okay.

24 MR. McGLOTHIN: That was loaded with 14 rounds of 40
25 caliber ammunition.

1 THE COURT: All right. Thank you. Let me turn to the
2 defense.

3 MR. SWEET III: Yes, Your Honor.

4 THE COURT: Mr. Sweet, your client has elected to go
5 to trial and, therefore, there's a plea of not guilty. Is that
6 correct?

7 MR. SWEET III: Yes, Your Honor.

8 THE COURT: So there's a plea of not guilty to the
9 possession.

10 MR. SWEET III: Yes, Your Honor.

11 THE COURT: And so is it your contention then that the
12 three officers are not telling the truth about the possession
13 of the firearm on the body of your client?

14 MR. SWEET III: Yes, Your Honor.

15 THE COURT: Do you have a theory that you can share
16 with the court at this point?

17 MR. SWEET III: Yes, Your Honor.

18 THE COURT: What's your theory?

19 MR. SWEET III: The officer appeared that morning, and
20 they say there were a number of people out there. This little
21 house where he was, he was on his way to work. He had to be at
22 work at 4. He stopped by this little house. It's a table out,
23 and they usually over in this area, six or seven, eight people
24 hanging around out there.

25 He went over there. He wasn't -- he stopped by to

1 holler at his friend before he went to work. We're going to
2 have -- I've got to go get the witnesses' name, the people from
3 his job. He never missed. He was there. He was a cook at the
4 Pelican Cove.

5 While he was there, police pulled up at this location,
6 and it was a number of people. It wasn't just him, wasn't just
7 a friend. There's a little card table out there. They play a
8 little music. There was a number of those people out there.

9 They started walking up to approach other people, not
10 just him, a lot of people. He didn't feel comfortable because
11 he was a convicted felon. He was on paper. And he said, *I*
12 *need to remove myself from here* because if anything came up
13 drugs, guns, anything comes up, he potentially is violated.

14 And so he started moving a fence. He started moving
15 toward the fence and leaving. We had one statement from an
16 officer saying he saw him left. This is new about the patting
17 him down. I don't think -- I think one officer said they
18 patted him down, one officer said they saw him leaving.

19 The court heard the testimony from the ATF agent where
20 he -- the statements said one thing and he said he interviewed
21 him and he changed. It's not the same.

22 As he was leaving, the officers ordered him to stop.
23 He didn't stop. They pursued him. It wasn't that long of a
24 pursuit. He was at the back of this house. He went across the
25 street. And when he hit that -- in his driveway, you could see

1 the officer shooting him -- shooting at him. They hit him in
2 the back. He was shot in the back, lower right back. He fell.

3 And then, you know, they said it got to -- I was new
4 and in none of the reports do they say the gun was under him.
5 That's what I asked the ATF agent. One report say he was over
6 by the garbage can. One of them says he was under it. But the
7 residents at the house are going to say that he didn't have a
8 gun. They witnessed it. They have video camera outside, and
9 they say they saw it and he didn't have a gun. They're going
10 to say when he fell they were kicking him, screaming at him,
11 *We'll blow your MF'ing head off. We'll do this and do that.*
12 And they saw him, arrested him and take him away.

13 They didn't know him, and they had the video. So they
14 went across and asked the people, *Who was he, who was he?* And
15 they contacted his mother and said, *Look, we have it on video*
16 *and we witnessed it. They just shot your son down.* They said,
17 *He had a gun.* They say, *He didn't have a gun.* That's going to
18 be our testimony.

19 THE COURT: Who said he didn't have a gun?

20 MR. SWEET III: These two witnesses, and I gave
21 witness statements from other people who were over on the scene
22 that said he didn't have a gun. The statements of the officers
23 are inconsistent at best. And, Your Honor, we just going to --
24 that's going to be our theory. We're going to put the officers
25 to the test. I don't think they can come in and say he had a

1 gun. They are going to have to -- they have motivation. The
2 court heard the testimony. The first testimony -- and I'm
3 going to get the transcripts. They say he ran. When he got to
4 this driveway he turned, aimed a gun at them. That's what they
5 say they dropped -- they didn't know they were being
6 videotaped. They said they turned. He aimed the gun at him
7 and they dropped him.

8 You see the videotape, that's not what happened.
9 That's why I want the statements. The statements I've been
10 given have no statements of these officers. The statements
11 I've been given are statements that -- summaries of other
12 officers of what these officers said and did. They are not the
13 officers statements themselves.

14 I did not produce the video to the City. I didn't
15 produce it to the news. I didn't do anything. I wanted him to
16 go ahead and do their internal affairs and give their
17 statements of how this happened. I figured it would be
18 inconsistent, and the video is inconsistent. I contend when
19 you see him running on the video on the shooting he doesn't
20 have a gun, and I've got witnesses that are going to say he
21 didn't have a gun. Whether the officers were mistaken or what
22 happened, that's going to be what we have at this point.

23 THE COURT: These -- so you have statements from these
24 witnesses.

25 MR. SWEET III: Yeah. I gave them two of them and I

1 talked to more that I didn't take statements from. I didn't
2 have the names. I told them I have got to go back out to that
3 community and get their names.

4 Dennis and I went out there. We had several people
5 surround us and tell us, "*We were here. We saw it. He didn't*
6 *have no gun.* He did take off running. We're going to bring
7 them in. Some of them don't -- some have records, some of them
8 don't want to come to court. But I'm going to subpoena them.

9 This couple at the house where he was shot, I believe
10 the ATF agent went there to speak to him. The husband or the
11 boyfriend said he didn't see it. He didn't know nothing about
12 it. And he called us and said they were out there and that
13 they said -- he said they said some derogatory stuff, but told
14 them -- he said he didn't want to talk to them.

15 The female who lives there, she's working. She seems
16 to have a pretty good clean record. She had video -- she's the
17 one at the house with the video and she's the one that went and
18 found the mother and she said she didn't see a gun. That's
19 what she says to us.

20 We looked at the video they gave it to us. The
21 mother -- she told the mother, *I've got the video*, and she gave
22 it to the mother, and that's how we got it. It didn't appear
23 he had the gun. It didn't -- surely didn't appear it occurred
24 the way the officer said. I don't care how you spin it. It's
25 not what the officer said.

1 The officer was running and shooting. You can see him
2 waving the gun around. They got a -- this other weapon
3 appeared. There's nothing that ties it to him other than these
4 officers. There's nothing that ties this weapon to him other
5 than these officers.

6 THE COURT: When you --

7 MR. SWEET III: It's a police weapon. It came from
8 the state of Illinois police department. So I don't -- I mean,
9 that's what the report says. I don't now how you're going to
10 tie him to a weapon that comes from the police department from
11 the state of Illinois. But that's where the weapon came from.

12 THE COURT: All right. Thank you.

13 MR. SWEET III: Yes, Your Honor.

14 THE COURT: Then I'll hold this motion in abeyance
15 until after the materials have been secured and submitted to
16 the defense when all of us can review it and then see whether
17 that information contains any information that would be
18 pertinent to this matter. But as of right now, I'm not going
19 to make any final ruling, but I'm going to wait until we have
20 finished reviewing the documents.

21 So, Mr. McGlothlin, with that, then, you understand
22 that the court is going to take this course of action on that
23 particular point. Now, are there any other points that the
24 court needs to address?

25 MR. MCGLOTHIN: Your Honor, not that's been -- not

1 within the motion filed by the defense.

2 THE COURT: Is there anything filed by the prosecution
3 that I need to take up?

4 MR. McGLOTHIN: Yes, Your Honor. There was -- the
5 government's filed its omnibus motion in limine and it's docket
6 number 21 filed on August 24, 2018. And there were several
7 things that the government placed within this motion that we
8 wanted to go ahead and move to exclude prior to trial to
9 prevent any of these issues from actually coming up during the
10 course of the trial.

11 THE COURT: All right. Let's go through each one of
12 them.

13 MR. McGLOTHIN: Your Honor, the first would be any
14 suggestion or accusation that a prosecutor or agent engaged in
15 misconduct. If there are issues that the defense would like to
16 get into, Your Honor, we believe that the defense, of course,
17 should speak to the court outside the presence of the jury to
18 make sure there's a factual foundation for making such
19 statements. So we just -- we'd like to make certain before any
20 of these statements are actually made in the presence of the
21 jury that the defense is made aware that they should approach
22 and that those issues should be brought to the court before
23 they are actually stated to the jury.

24 THE COURT: All right. Defendant's response, does the
25 government anticipate making any such suggestion?

1 MR. SWEET III: Your Honor, not against the prosecutor
2 or the ATF agent. That's -- if that's who this is addressing.
3 I've told the court where I plan to go with Jackson Police
4 Department.

5 THE COURT: Okay. It says here that the target of
6 this first motion in limine is towards the prosecutor or agent.
7 So you do not intend to --

8 MR. SWEET III: At this point, I have no information
9 concerning the prosecutor or the ATF agent.

10 THE COURT: Okay, then. Mr. McGlothin, that motion is
11 granted. That is -- but you had asked that it be handled
12 outside the presence of the jury, but he's saying that he does
13 not intend to pursue that. So put that in the order.

14 MR. MCGLOTHIN: Okay.

15 THE COURT: Okay. Next, number 2, Mr. McGlothin.

16 MR. MCGLOTHIN: Your Honor, as it relates to -- the
17 government would like to preclude the defendant -- and the
18 government plans to do this but -- from mentioning the absence
19 of any particular person on the government's witness list or
20 the government's plan to call or not to -- or not to call
21 particular witnesses.

22 Your Honor, throughout the course of the trial the
23 government will see how the trial goes, and just because a
24 person may be on our witness list, those may be individuals
25 that we choose not to call and the defense should be precluded

1 from making statements as such -- making statements such that
2 the government had an opportunity to call this witness or that
3 witness and chose not to do such. And the courts have found
4 that a jury could be confused if told that the government lists
5 a particular witness on his list but that person did not
6 testify.

7 And in addition, although the government, of course,
8 retains its burden of proof, no negative inference such as
9 speculation about what the witness might have said is permitted
10 based on the government's decision not to call a witness. And
11 that's outlined in *United States v. Heard*, which is a Fifth
12 Circuit opinion from 2013. And that court pretty much stated
13 that an adverse inference is not appropriate when the witness
14 is available -- it is equally available to both parties.

15 So in light of that, Your Honor, the government would
16 like to move that any statements pertaining to who we call or
17 do not call that they be -- that those are not allowed.

18 THE COURT: Mr. Sweet?

19 MR. SWEET III: I ask the court to hold this in
20 abeyance to see what the -- whether there are going to be
21 witnesses who aren't available to us. I know for one thing,
22 there's one of the police officers that moved to Texas and I
23 believe he's beyond the subpoena power of this court right now.
24 I don't know it for sure, but that's what I've been told.

25 The government can get him so I'd ask the court to

1 hold that in abeyance. If the officer takes the Fifth -- they
2 have immunity; I don't. I ask the court to see how this plays
3 out. It may very well be that I don't get any instruction and
4 nothing occurs but I think the court has to make that
5 determination after the trial.

6 THE COURT: Well, what I'm going to do is grant the
7 motion but allowing leave to the defendant to reurge the motion
8 if circumstances change.

9 MR. SWEET III: Yes, Your Honor.

10 THE COURT: Next, number 3, criminal records.
11 Mr. McGlothlin?

12 MR. MCGLOTHIN: Your Honor, as it relates to this,
13 just to ensure that the only certain criminal convictions be
14 used to impeach a witness and that the proponent of evidence of
15 certain old convictions must give reasonable written notice of
16 intent to use them, and so the government plans to do the same
17 thing as relates to the defense.

18 We have been provided some of the witnesses for the
19 defense, and they do have -- some of them or at least one for
20 sure does have a criminal history. And so we do plan to
21 provide that to the defense, but we want to ensure that the
22 defense does the same for any witnesses that we list.

23 THE COURT: I'll take this up at trial after I have
24 been advised of any criminal convictions concerning witnesses
25 and the parties' response to those convictions, that is whether

1 they still wish to call the witness and whether they are
2 contending that those criminal records would not be admissible.

3 So I will take that up once I see what the -- not what
4 but whether there are any convictions and what purposes that
5 these matters would be introduced. The court is aware that, of
6 course, criminal convictions may play on the matter of
7 credibility, but there's -- but there also are some
8 restrictions on the utilizations of such. So I can't rule in
9 the blind on that. I have to wait until I see the actual
10 convictions and then understand the gravity or the direction of
11 the testimony of the witness. So I'll hold this one in
12 abeyance.

13 MR. SWEET III: Your Honor, may I ask if he's running
14 an NCIC on the witnesses I have given him, can I get a copy of
15 that NCIC? I don't have that available to me. I'll give him
16 the names if he's running -- I have no way to do that.

17 THE COURT: Mr. McGlothlin?

18 MR. MCGLOTHIN: Your Honor, I believe we've turned
19 over the NCIC as relates to the defendant. I don't think we're
20 required to turn over NCIC as it relates to their potential
21 witnesses. I think they are going to be his witnesses, and
22 they can question -- he can question them as to whether they
23 have a criminal history or not, but I don't think the
24 government's required to turn over NCICs on every defense
25 witness. I think that's their responsibility.

1 THE COURT: I need, Mr. Sweet, for you to identify
2 these witnesses. And if you feel that they have criminal
3 records that need to be revealed to the defendant and that the
4 defendant is unable to determine what the criminal records are
5 through some reason, then you need to file an appropriate
6 motion on that. Then I'll take it up later.

7 Go to the next one, Mr. McGlothlin.

8 MR. MCGLOTHIN: Your Honor, as relates to number 4,
9 Your Honor, this is in essence stating that the defense be
10 precluded from providing any self-serving statements as relates
11 to this defendant unless this defendant takes the stand.

12 MR. SWEET III: The court will have to rule on that at
13 trial what statements -- the circumstances under which
14 statements are made or whatever.

15 THE COURT: Well, I don't know if he's made any
16 out-of-court statements that would be deemed exculpatory, but
17 ordinarily those statements would not be admissible. So if
18 there is a change in that, then I need to hear at trial. But
19 at the present time -- at the present, I will have to agree
20 with the motion. The motion will be granted with leave to the
21 defendant to approach the court during the course of trial and
22 ask the court to reconsider with regard to some new approach on
23 it.

24 But as of right now, this seems to be a
25 straightforward matter and so, therefore, the matter is -- the

1 motion in limine is granted.

2 Let's go to number 5.

3 MR. McGLOTHIN: Your Honor, mention of any disputes
4 over discovery that the government may have produced, just
5 making any reference to the government provided this or did not
6 provide that, simply trying to ensure that we stick to the
7 facts of the case, Your Honor.

8 THE COURT: What you've asked is that any such
9 disputes be handled outside of presence of the jury.

10 MR. McGLOTHIN: Yes, Your Honor.

11 THE COURT: I'm going to grant that motion on that
12 basis that any such disputes will be handled outside the
13 presence of the jury.

14 Number 6.

15 MR. McGLOTHIN: Your Honor, making any mention of
16 other persons who have or have not been charged in this or
17 other cases. Particularly, Your Honor, as relates to this
18 being -- I think this goes back to that other issue of
19 involving the officers and whether the officers were charged or
20 not charged with having shot him or whatever the issues may be
21 arising of this, what the government contends is a civil
22 matter, but we don't think that any mention of persons who have
23 been charged in this case should be mentioned to the jury.
24 We've only charged this defendant here with being a felon in
25 possession and to make any mention whether the officers have

1 been charged with anything or not is irrelevant to the guilt or
2 innocence of this defendant.

3 THE COURT: I'll have to carry this one with the
4 trial. Number 7.

5 MR. McGLOTHIN: Your Honor, this one pertains to any
6 argument that encourages the jurors to ignore the law and not
7 follow the court's instructions of otherwise violate their
8 oaths as jurors. In essence what we're saying, Your Honor, is
9 to -- particularly as it relates to attempting to -- by the
10 defense to invoke the defendant's age, health, education, and
11 any injury sustained as a result of this incident or family
12 needs that are intended to invoke sympathy from the jury, and
13 the court have been clear in that one in *United States v.*
14 *Renaud* not be taken up.

15 The Second Circuit has also stated that they
16 categorically reject the idea that in a society committed to
17 the rule of law, jury nullification is desirable or the courts
18 may permit to it occur when it is within their authority to
19 prevent it.

20 Your Honor, we put this one in here because during the
21 course of the hearings that we've had, the defense has
22 continuously stated as to how this defendant has bullet -- has
23 a bullet in his back and that the bullet is lodged in his back
24 and that they paid, you know, thousands of dollars in medical
25 expenses as relates to this shooting, and the government

1 contends that those issues are completely irrelevant to whether
2 this defendant possessed a firearm or not and that they do
3 nothing but to attempt to elicit sympathy from the jury in
4 efforts to -- in efforts to get jury nullification. So as
5 such, we believe that the defense should be precluded from
6 making mention of those things.

7 THE COURT: Mr. Sweet, why wouldn't that be an effort
8 to invoke jury nullification?

9 MR. SWEET III: Your Honor, he mentioned in the
10 hearing one of the factors the court can consider on pretrial
11 detention is health, condition.

12 THE COURT: Well, that's on pretrial detention.

13 MR. SWEET III: Right. He mentioned that I had
14 mentioned it. The reason I had mentioned it was because that
15 was specifically one of the areas the court looks at and
16 considers.

17 THE COURT: But this is not an area that you wish to
18 explore in front of the jury?

19 MR. SWEET III: Your Honor, these cases, I think,
20 mainly relate to jury instructions and whether you're going to
21 get a nullification. The court instructs the jury about
22 sympathy. As far as my arguments or anything, what I would ask
23 the court to do is as we always do is object in trial if you
24 think it's inappropriate and let the court rule.

25 I don't want to be -- I don't know every situation

1 that comes up or every argument I have made -- I mean, I've got
2 to get ready for trial. I don't want to run afoul of the
3 court's order when I don't really -- it may be that I don't
4 really understand it. He interprets that as sympathy or
5 something of that nature.

6 I've tried cases before this court before. If you
7 object, this court rules. I comply with the court's rulings.
8 I don't -- and I mean, I would agree these issues are about
9 jury instruction, jury nullification. This court's going to
10 instruct the jury not to have sympathy and decide on basis of
11 sympathy those kind of things. I don't want any court order
12 saying that anything that may touch on that violates the court
13 order. I haven't -- that would be difficult for me and
14 restraining for me, Your Honor, in trying this case. I think
15 the court can do like it always does is they object and this
16 court rules.

17 THE COURT: Well, Mr. McGlothin, I'm going to agree
18 that matters of jury nullification are not appropriate for the
19 jury's consideration. So -- but it's kind of hard just to make
20 a sweeping declaration as to what all falls within the embrace
21 of that prohibition. So I'm saying as a general proposition
22 that matters that might touch on jury nullification are not
23 admissible.

24 Now, having said that, I need to call on you to tell
25 me what specifics there are and I need to hear from you during

1 the course of the trial or right before trial, if you have a
2 list of those things so -- that would touch on jury
3 nullification. So if you can give me some specifics, then I
4 can make some rulings with regard to those specifics.
5 Otherwise, I'm going to stand on the general proposition and
6 wait until you give me those specifics so then I can speak to
7 the defense and say these matters are in the arena of jury
8 nullification and shall not be mentioned. Okay?

9 MR. McGLOTHIN: Yes, Your Honor. I can certainly
10 provide that to the court.

11 THE COURT: And also it's always a copy to Mr. Sweet
12 so he can make whatever objections he has to make. Okay?

13 MR. McGLOTHIN: Yes, Your Honor.

14 THE COURT: Let's go to the next matter.

15 MR. SWEET III: I agree with 8.

16 THE COURT: You agree with 8, don't you, on plea
17 negotiations, et cetera?

18 MR. SWEET III: Yes, Your Honor.

19 THE COURT: That motion in limine is granted. Number
20 9, potential punishment. And, Mr. Sweet, do you agree with
21 that one too?

22 MR. SWEET III: Yes, Your Honor.

23 THE COURT: Okay. Then the defense agrees with number
24 9 that's styled "Potential Punishment or Any Other Consequences
25 That Might Result From a Conviction." Then the motion in

1 limine is granted.

2 Number 10. The defense counsel's personal opinions of
3 or relationship with the defendant.

4 MR. SWEET III: I would ask the court to -- if I say
5 something, let him object. I don't know what he -- again, I --

6 THE COURT: I'm going to carry that on with the trial.

7 MR. McGLOTHIN: I will agree to hold that one until
8 trial, Your Honor.

9 THE COURT: Pardon me?

10 MR. McGLOTHIN: I will agree we can take this up
11 during the course of trial.

12 THE COURT: Okay. That's number 10. Number 11, the
13 use of interview reports prepared by law enforcement to impeach
14 government witness.

15 MR. McGLOTHIN: Your Honor, I think this is based on
16 the issues that, one, that Mr. Sweet brought up earlier. And
17 he is correct that there are statements that were given by the
18 officers who -- two of the officers who were on scene, but
19 those were not statements that were actually prepared by those
20 officers. There may be statements that are within the internal
21 affairs report that have been -- and, of course, the government
22 has not seen that report at this time, but there may be
23 statements that the officers gave during that time, but I
24 just -- we put this in here, Your Honor, because I think it's
25 common knowledge that these witnesses cannot be impeachment and

1 that's any potential witness cannot be impeached on statements
2 that were no prepared by them and were not of their own words
3 or having been adopted by them.

4 THE COURT: Mr. McGlothlin, I'm going to have to carry
5 that one to trial too because these witness statements may be
6 used as potential impeachment evidence after a witness has
7 already testified. And if the witness has already testified,
8 then it might be fair game for the defense then to ask some
9 present witness reaction to testimony already provided. So I'm
10 going carry it to the trial and see what the sequence is and
11 then also what specific information upon which the defendant is
12 relying to see if it is cogent. If the defense attempts to use
13 any such information and you think it is not appropriate, then
14 you can ask for a sidebar.

15 MR. MCGLOTHLIN: Yes, Your Honor.

16 THE COURT: All right. Let me go to the next one.

17 MR. MCGLOTHLIN: Your Honor, this is to exclude
18 specific instances of good conduct or good character which are
19 irrelevant to the conduct charged in this indictment and
20 particularly whether the defendant is an otherwise law abiding
21 citizen is not probative of his conduct in connection with the
22 crime charged in this case. And that's outlined in *United*
23 *States v. Cleveland* from the Eastern District of Louisiana
24 (1997).

25 THE COURT: All right. Now, tell me what evidence you

1 feel might be elicited on the defendant's good character.

2 MR. SWEET III: After the court's pretrial hearing, I
3 want to hear this one. I say after the court's pretrial
4 hearing in this matter and findings, I'd like to hear that too.

5 THE COURT: All right. Mr. McGlothlin?

6 MR. MCGLOTHLIN: Your Honor, I'm not aware of any
7 specific instances that they would like to delve into, but
8 during the course of our hearings Mr. Sweet has been quite
9 clever so I just wanted to stop this before we get -- before we
10 actually get before the jury.

11 MR. SWEET III: I wasn't clever enough.

12 THE COURT: Well, okay. We can -- okay. We can see,
13 but -- and if there is some inadvertent disclosure of some good
14 guy stuff, then I will instruct the jury that that's not to be
15 considered. But if the prosecution is aware of any portending
16 effort to paint this defendant in a good citizenship light,
17 then that needs to be brought to the court's attention
18 immediately. And I would agree with the defendant -- with the
19 government that any such testimony is generally inadmissible.

20 MR. SWEET III: I would ask the court if I head that
21 way and don't realize it, stop me because I don't want the
22 court to rule I opened the door for something.

23 THE COURT: Okay. Well --

24 MR. SWEET III: I don't plan on it.

25 THE COURT: I won't be able to do it on my own, now.

1 So you'll have to sort of police yourself, you and cocounsel
2 about that. But, now -- but if you run into that marsh, then,
3 you know, you might be attacked by some alligator over there
4 that you are hoping not to be so. So --

5 MR. SWEET III: I'm not meaning to laugh.

6 THE COURT: I know. But that's the ruling of the
7 court on the matter. All right. Okay.

8 MR. McGLOTHIN: Yes, Your Honor.

9 THE COURT: Okay.

10 MR. McGLOTHIN: And, Your Honor, the last one is just
11 the existence or content of the government's motions and any
12 order of this court in response to those motions. I don't
13 think either side plans to bring those up, but we just put it
14 in here.

15 THE COURT: All right. Mr. Sweet?

16 MR. SWEET III: I ask the court to just carry that. I
17 don't really understand -- the only thing that could possibly
18 come up is if something might touch here from us trying to get
19 these records from the --

20 THE COURT: I'll carry them to trial, now. I don't
21 know, you know -- that's not specific enough here.

22 MR. McGLOTHIN: Yes, Your Honor.

23 THE COURT: I need to make some rulings so I will
24 carry it to trial. And I'll only state that any such dispute
25 has to have relevance on the charge which is before the court.

1 MR. McGLOTHIN: Yes, Your Honor.

2 THE COURT: Anything more than that, then if it
3 doesn't bear on the facts allegedly present here and the
4 credibility of the witnesses relevant to this matter, then that
5 would be not relevant.

6 MR. SWEET III: Yes, Your Honor. I understand.

7 THE COURT: Okay. Now, Mr. McGlothlin, does that
8 exhaust your list of matters to be submitted to the court?

9 MR. McGLOTHIN: Yes, Your Honor, it does.

10 THE COURT: Okay. Now, do you have any more?

11 MR. McGLOTHIN: No, Your Honor.

12 THE COURT: Okay. And, Mr. Sweet, do you have any
13 more?

14 MR. SWEET III: No, Your Honor. The next important
15 thing is this production, and we may be back asking the court
16 for in camera or the government may have to get the court
17 involved. So as soon as we can know that, we can handle that
18 matter. That's a pretty important matter to us.

19 THE COURT: All right. And, again, give me the date
20 when this shooting occurred.

21 MR. McGLOTHIN: It was October 27, 2017, Your Honor.

22 THE COURT: '17.

23 MR. SWEET III: Yes, Your Honor, States.

24 THE COURT: Okay. So I ask that question, Mr. Sweet,
25 because I'm sure you're concerned with it. Are you going to

1 handle any civil action allegedly owned by your client?

2 MR. SWEET III: The civil case?

3 THE COURT: Yes.

4 MR. SWEET III: I was associated by a person, Ed
5 Fletches, and, yeah, we were going to do the civil action at
6 this point.

7 THE COURT: Mr. Sweet, you do understand that the
8 thrust of Mr. McGlothin's action here in his motions is that
9 this is a criminal action only potentially related or only
10 specifically related to the criminal charge here.

11 MR. SWEET III: Yes, Your Honor.

12 THE COURT: So any efforts to expand on that to derive
13 discovery on a civil action will be met with the court's ruling
14 that such efforts would not be appropriate. So the court is
15 not to be -- this court is not be utilized as a discovery venue
16 for the civil matter but only to resolve the criminal issue.

17 MR. SWEET III: Yes, sir. I agree.

18 THE COURT: So during the course of these proceedings,
19 I will be endeavoring to maintain that distinction between what
20 will be appropriate in the civil action as opposed to what is
21 appropriate here in this criminal action which carries certain
22 elements of proof. And if something is outside those elements,
23 then the court is going to rule that the matters sought are
24 inadmissible because this is not a laboratory for the
25 production of admissible evidence in the civil case or the

1 formulation of a theory in a civil case for nailing down of
2 witnesses on a potential forthcoming civil case but that here
3 we are only concerned with the major elements here.

4 And the only element that could be implicated by this
5 discovery dispute that is ongoing is element number 1, whether
6 this defendant possessed -- knowingly possessed a firearm
7 because the question as to whether he is a convicted felon I'm
8 pretty sure is not a hot-button issue here and that it's
9 pretty -- I will assume it's going to be pretty well
10 established that he's a convicted felon.

11 And then the third element is whether the firearm at
12 issue traveled in interstate commerce and I think that will be
13 easily shown since Mississippi does not have any munition plant
14 that manufactures guns and ammunition in the state of
15 Mississippi so that all of those items come from outside the
16 state.

17 So the only element of this particular criminal charge
18 which is being contested is whether he knowingly possessed a
19 firearm as charged. And so in that vein, I'm allowing this
20 discovery to be developed just to see if it bears on that
21 issue. But if it doesn't, then I'll have to rule that that
22 discovery would not bear on that particular issue.

23 But as to the way you described it a few moments ago
24 as to whether your client actually possessed a firearm, the
25 witnesses are saying that he did not, et cetera, and that you

1 have proof that you wish to elicit from those witnesses on the
2 particular point, then that's within the ballpark of dealing
3 with element number 1 on the particular point.

4 And then I imagine you're saying that -- not imagine
5 because you said it, that the police officers planted the gun.
6 That's your theory. Is that right?

7 MR. SWEET III: They planted or somebody did. He
8 didn't have it. I'm not going have to point to -- Your Honor,
9 what I'm going to do is I'm going to get these reports and I'm
10 going to test -- through the confrontation clause I'm going to
11 test their veracity and truthfulness. I'm going to impeach
12 their statements about how this occurred. There are
13 inconsistent statements. The court knows -- the ATF agent told
14 the court in the pretrial hearing.

15 So we're going to go and test their veracity -- that's
16 correct, Your Honor -- and impeach him, and all the cases are
17 going to be about the credibility and whatever of those
18 officers.

19 Now, I don't expect that -- and what I don't -- one of
20 the actual shooters that you see, I don't think he's going to
21 come. I think he's moved to Texas. We -- so we're going to
22 have some issues, but that's going to be their case to test
23 these officers.

24 THE COURT: Well, I think that's fair game on that
25 first element.

1 MR. SWEET III: Yes, Your Honor.

2 THE COURT: As long as we don't go beyond that in
3 getting into some matters that are basically civil in nature.

4 MR. SWEET III: That's correct, Your Honor. Your
5 Honor -- and I just say this to the court. I'm aware, and I
6 know how the court runs this court. I'm not going to go afoul.
7 If I do, it's not intentional.

8 However, Your Honor, everything that these officers
9 said, this investigation, any CSI, it's really important. In
10 the pretrial hearing, for instance, this guy said he fit the
11 description. Well, the guy gave them the name of the guy who
12 shot him. He said his last name is Gator. He didn't know his
13 last name.

14 Then they said -- come in and say that he fit this
15 description. We don't have the description. I can't be left
16 to take this officer's summary remember statement that he fit
17 the description of a guy that just got -- in the earlier
18 report, he gave them a name.

19 He said, *Who shot you?*

20 *Gator.*

21 *What's his last name.*

22 *I don't know his last name.*

23 Then two or three hours later, they come up and say, *Hey,*
24 *this guy fits the description.* That doesn't make sense. I'd
25 like to have the report earlier to see what description they

1 had.

2 Where I got this summary, the name Gator was from the
3 reports I have. All I have are two officers' summaries of what
4 everybody said and everybody did. That limits me to test the
5 officers who chased and witnessed him with a gun, who did the
6 shooting, their veracity. Why they even came up here to him.
7 I mean, they had to have an explanation how he fit the
8 description of a guy earlier. Did he? What's the description?
9 Why you looking -- why you not at Gator's house?

10 I mean, look to me like you go to the police department and
11 say, *Hey, who's the guy that lives over here a/k/a Gator?*
12 *What's his name? Where is he? Why are you out in the*
13 *community shooting people? You know his name.* That's the kind
14 of stuff we're looking at Your Honor. That tests their
15 veracity, their credibility. It's very important to us, Your
16 Honor.

17 THE COURT: Well, that's what an office of trials is
18 focused upon, the testing of facts and credibility. So as long
19 as you're in those bounds, then I wouldn't see a problem. And
20 Mr. McGlothin can also make his objection if he thinks that you
21 have overstepped because, again, you all know the facts of this
22 case better than I do.

23 MR. SWEET III: Your Honor, I've tried a number case
24 before you. I didn't always agree with your rulings, but I
25 always followed them.

1 THE COURT: Yes, you did. You agreed. You just
2 didn't know at the time you were agreeing.

3 MR. SWEET III: Yes, Your Honor.

4 THE COURT: You were agreeing. You know, you just
5 hadn't thought about it. That's all.

6 MR. SWEET III: That's what it?

7 THE COURT: That's right after you thought about it,
8 then you will say, yeah --

9 MR. SWEET III: You were right.

10 THE COURT: That's right. Then there's a guy, blues
11 singer, Freddie Jay. I don't know if you know him. Plays
12 guitar. He has a song where he says I thought about it. I
13 thought about it. I thought about it again. Then I thought
14 about it one more time. That's right. And so every time he
15 sings the song, if I'm present, then he always points over to
16 me because I told him I like that because I thought about it.
17 So I know you thought about it. That's right. Okay, then.
18 Thank you much.

19 MR. SWEET III: I just want the court to know I'm
20 going to stay within the bounds. I do need this information.
21 Your Honor, I probably laid out more than I wanted to my plans
22 in this trial. They kind of know my whole strategy now, but
23 hey, this is what it is.

24 THE COURT: I don't think you gave him your whole
25 strategy.

1 MR. SWEET III: Not all of it.

2 THE COURT: I am sure you have got a hold card
3 somewhere. But anyway, Mr. McGlothlin, could you prepare the
4 order on this point on these matters and then submit it to
5 Mr. Sweet for his review and then after that submit it to the
6 court.

7 MR. MCGLOTHIN: Yes, Your Honor, I will.

8 THE COURT: I will allow you until Friday to submit
9 all of these matters so that you can also include your
10 conversation with the City.

11 MR. MCGLOTHIN: Yes, Your Honor.

12 THE COURT: And let me know what the City says about
13 the production of these documents. Okay?

14 MR. MCGLOTHIN: Yes, Your Honor. Just for clarity
15 purposes, Your Honor, we're going to come back to have -- after
16 we obtain all of those documents, are we going to come back to
17 have another hearing on those matters?

18 THE COURT: Yes. Before trial we'll have another
19 hearing as to the relevancy of those particular matters. At
20 that time, then I would have had a chance to read those
21 documents and all others concerned would have had the same
22 opportunity.

23 MR. MCGLOTHIN: Yes, Your Honor.

24 THE COURT: Already. Thank you much. All right.
25 Then. Guys, I'll see you all later.

1 CERTIFICATE OF REPORTER

2
3 I, CHERIE GALLASPY BOND, Official Court Reporter, United
4 States District Court, Southern District of Mississippi, do
5 hereby certify that the above and foregoing pages contain a
6 full, true and correct transcript of the proceedings had in the
7 aforementioned case at the time and place indicated, which
8 proceedings were recorded by me to the best of my skill and
9 ability.

10 I certify that the transcript fees and format comply
11 with those prescribed by the Court and Judicial Conference of
12 the United States.

13
14 This the 29th day of May, 2019.

15
16 s/ *Cherie G. Bond*
17 Cherie G. Bond
18 Court Reporter
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